

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
September 8, 2008

D049431 People v. Gomez

The petition for rehearing is denied. The unpublished opinion, filed August 13, 2008, is modified. No change in judgment.

D053477 People v. Evans

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issue immediately.

D051283 People v. Averhart

The trial court is ordered to amend the abstract of judgment to reflect that Averhart pleaded guilty to voluntary manslaughter and forward the amended abstract of judgment to the California Department of Corrections and Rehabilitation. (See fn. 2, *ante*.) As so modified, the judgment is affirmed. McConnell, P.J.; We Concur: Benke, J., McDonald, J.

D053509 In re Hubbard on Habeas Corpus

The petition is denied.

D053467 Majestic Marble Design, Inc. v. Weir Bros. Construction Corp.

The appeal is dismissed on the ground it is taken from a nonappealable interlocutory order.

D051321 Benkosky v. Darby

The judgment is affirmed. Kevin Darby is awarded costs on appeal. O'Rourke, J.; We Concur: Haller, Acting P.J., McDonald, J.

Court convened at 9:00 a.m.

Present: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Joan Irion
Clerk: D. Moore

D051812 Robinson et al. v. Goebel

Cause called on merits. K. Martin White, Esq. argued for appellant. Daniel Joseph Winfree, Esq. argued for respondent. Mr. White replied. Cause submitted.

Court recessed at 9:15 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Alex McDonald and Cynthia Aaron
Clerk: D. Moore

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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D052329 In re Dylan E., a Juvenile

Cause called on merits. Christy Curtis Peterson, Esq. argued for appellant. Gary Seiser, Deputy County Counsel argued for respondent. Julie E. Braden, Esq. argued for the minor. Ms. Peterson replied. Cause submitted.

D051647 Ramona Equipmental Rental, Inc. v. Montgomery

Cause called on merits. Christopher J. Sunnen, Esq. argued for appellant. James Thomas Bentson, Esq. argued for respondent. Mr. Sunnen replied. Cause submitted.

**D051955 Starboard Street, LLC v. Venture Commerce Center-Eastlake
Condominium Association et al.**

Cause called on merits. Joseph G. Dicks, Esq. argued for appellant. Mitchell Scott Brachman, Esq. argued for respondent. Mr. Dicks replied. Cause submitted.

D052665 Quiones v. Superior Court/People-RPI

Matter called on merits. Chuck Sevilla, Esq. argued for petitioner. James Atkins, Deputy District Attorney argued for real party in interest. Mr. Sevilla replied. Matter submitted.

D051208 O'Leary v. Awbrey et al.

Cause called on merits. Amelia A. McDermott, Esq. argued for appellant. Michael P. Cayaban, Deputy Attorney General argued for respondent. Ms. McDermott replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE
September 9, 2008

Court recessed at 3:02 p.m. until Tuesday, September 9, 2008 at 9:00 a.m.

D051474 People v. Williams

The judgment is affirmed. O'Rourke, J.; We Concur: Haller, Acting P.J., McDonald, J.

D051823 People v. Sinclair

The judgment is reversed. Huffman, Acting P.J.; We Concur: Nares, J., Aaron, J.

D050713 James v. Byrd

The judgment is affirmed. Nares, Acting P.J.; We Concur: McDonald, J., Aaron, J.

D053657 Martinez v. Superior Court of San Diego County/Kellett

The petition is denied.

**D053177 Susana G. v. Superior Court of San Diego County/San Diego County Health
and Human Services Agency**

The petition is denied. Huffman, Acting P.J.; We Concur: McDonald, J., McIntyre, J.

D051447 Federal Deposit Insurance Corporation v. Dintino

The judgment is reversed to the extent it denied appellant's motion for an award of Civil Code section 1717 attorney fees. The matter is remanded with directions that the trial court enter a new order and judgment granting that motion and awarding appellant reasonable attorney fees and costs consistent with this opinion. In all other respects, the judgment is affirmed. The parties shall bear their own costs of appeal. McDonald, J.; We Concur: Huffman, Acting P.J., Nares, J.

D051408 Dornbirer v. Kaiser Foundation Health Plan Inc., et al.

The judgment of the trial court is affirmed. CERTIFIED FOR PUBLICATION
Aaron, J.; We Concur: Haller, Acting P.J., O'Rourke, J.

Court convened at 9:00 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate
Justices Terry O'Rourke and Joan Irion
Clerk: D. Moore

D049805 Mills et al. v. U.S. Bank

Cause called on merits. David Lawrence Kahn, Esq. argued for appellant. Kenneth S. Klein,
Esq. argued for respondent. Mr. Kahn replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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September 9, 2008 (Continued)

Court recessed at 9:19 a.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke

D051102) Lawrence v. Arnell

D052464) Lawrence v. Arnell

Cause called on merits. Lantz Arnell, argued for appellant in pro per. Cause submitted.

Court recessed at 9:36 a.m. to change panel members. New panel members: The Honorable James McIntyre, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Joan Irion

D050162 Lott v. Coldwell Banker Residential Brokerage Company et al.

Cause called on merits. Patricia Jo Custer, Esq. argued for appellant. Michael Frederick Obrand, Esq. argued for respondent. Ms. Custer replied. Cause submitted.

D050289 People v. Grant

Cause called on merits. Nancy J. King, Esq. argued for appellant. William Wood, Deputy Attorney General argued for respondent. Ms. King replied. Cause submitted.

Court recessed at 10:15 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Gilbert Nares
Clerk: D. Moore

D049618 In re Michael T. on Habeas Corpus

Matter called on merits. Melissa Mandel, Deputy Attorney General argued for respondent. Danalynn Pritz, Esq. argued for petitioner. Matter submitted.

Court recessed at 1:46 p.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Richard Huffman and Gilbert Nares

D051507 People v. Ramirez

Cause called on merits. John L. Staley, Esq. argued for appellant. Collette Cavalier, Deputy Attorney General argued for respondent. Submission being deferred pending Supreme Court's decision, in People v. Nguyen.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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September 9, 2008 (Continued)

D050291 McGuigan v. City of San Diego

Cause called on merits. Colleen Carlton Smith, Esq. argued for respondent. Richard H. Benes, Esq. argued for respondent, McGuigan. Christopher David Nissen, Esq. argued for appellant. Cause submitted.

Court recessed at 2:23 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Cynthia Aaron

D051771 M. R. Contreras Construction et al. v. Fansler et al.

Cause called on merits. Kenneth Stone, Esq. argued for appellant. Steven Christopher Levstik, Esq. argued for respondent. Mr. Stone replied. Cause submitted.

D050794 Stillwell v. Salvation Army

Cause called on merits. John Rollins Goffar, Esq. argued for appellant. Daniel James Woods, Esq. argued for respondent. Mr. Rollins replied. Cause submitted.

D051120 New et al. v. Kroeger et al.

Cause called on merits. Charles H. Dick, Jr., Esq. argued for appellant. Daniel F. Lula, Esq. argued for respondent. Cause submitted.

Court recessed at 3:25 p.m. until Wednesday, September 10, 2008 at 9:00 a.m.

D053661 Oxford Pacifica LLC v. The Superior Court of San Diego County/Triester Vista KM Corporation

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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D050539 People v. Johnson

D050999 People v. Johnson

(Consolidated)

The judgment is affirmed. Huffman, Acting P.J.; We Concur: McIntyre, J., O'Rourke, J.

D049805 Mills et al. v. U.S. Bank

The judgment is affirmed. Costs are awarded to respondents. CERTIFIED FOR PUBLICATION. Irion, J.; We Concur: McConnell, P.J., O'Rourke, J.

D049656 People v. Chaidez

The judgment is affirmed. O'Rourke, J.; We Concur: McConnell, P.J., Haller, J.

D052004 Estate of Kempff deceased

The judgment is affirmed. O'Rourke, J.; We Concur: Huffman, Acting P.J., Irion, J.

D050939 Somo et al. v. Chevron Products, U.S.A.

The judgment is reversed and the matter remanded with directions that the trial court grant plaintiffs' applications to file their motion for leave to amend their complaint and order Chevron to produce the documents that are the subject of plaintiffs' motion to compel and answer deposition questions posed to Londquist to the extent they do not ask him to disclose advice given to him by counsel concerning how he should respond to questions during the deposition. Plaintiffs shall recover their costs on appeal. O'Rourke, J.; We Concur: Huffman, Acting P.J., Irion, J.

D051916 Gold v. Sherpaul Corporation

Order affirmed. Appellants to pay respondent's costs on appeal. Haller, Acting P.J.; We Concur: McIntyre, J., Irion, J.

D050361 People v. Parraz et al.

With respect to Buchanan, the judgment is affirmed. With respect to Parraz, the trial court is directed to prepare an amended abstract of judgment for Parraz to show that on count 7 a sentence of life with the possibility of parole plus 10 years for the gun use enhancement and a minimum parole eligibility of 15 years. The trial court shall forward the amended abstract of judgment to the Department of Corrections and Rehabilitation. As so modified, the judgment of Parraz is affirmed. Benke, Acting P.J.; We Concur: Huffman, J., McDonald, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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September 10, 2008 (Continued)

D052865 In re Julian M., a Juvenile

The order terminating parental rights is reversed. The matter is remanded to the juvenile court with directions to order the Agency to complete an assessment in compliance with section 366.3, subdivision (h). The court is further directed to hold a new hearing under section 366.26 in which it shall fully consider the assessment report in determining Julian's permanency plan and make findings of fact on the record. O'Rourke, J.; We Concur: McDonald, Acting P.J., McIntyre, J.

**D053671 San Diego Unified Port District/Superior Court of San Diego
County/Deborah Seiler et al.**

The petition for writ of mandate, request for stay and responses have been read and considered by Presiding Justice McConnell and Associate Justices Haller and McDonald. The petition is denied.

D050747 People v. Payne, Jr.

The opinion filed August 12, 2008, is modified. As modified, the petition for rehearing is denied. This modification changes the judgment.

D052504 Cooper v. Superior Court of San Diego County/People

Let a peremptory writ of mandate issue directing the superior court to (1) vacate its February 7, 2008 order directing Cooper to submit to a mental examination, and (2) enter an order denying the People's January 24, 2008 motion for an order directing the mental evaluation of Cooper. The stay issued by this court on March 11, 2008 is vacated. Aaron, J.; We Concur: McConnell, P.J., Benke, J.

D053372 Suarez v. The Superior Court of San Diego County/The People

The petition for writ of habeas corpus and informal response have been read and considered by Presiding Justice McConnell and Associate Justices Haller and McDonald. The petition is treated as a petition for a writ of mandate. The petition is denied. A copy of the Attorney General's letter dated August 20, 2008, to the Clerk of the Court is to be served on petitioner at the address provided in his Notice of Change of Address dated August 27, 2008.

D053656 Shorts v. Superior Court of San Diego County/San Diego Police Department
The petition is denied.

D053555 In re Comaduran on Habeas Corpus

The petition is denied.

Court convened at 9:00 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke
Clerk: D. Moore

D051680 Pender v. Waldenmayer et al.

Cause called on merits. Rory Wicks, Esq. argued for appellant. Michael H. Fish, Esq. argued for respondent. Gary Edward Shoffner, Esq. was present in oral argument with Mr. Fish, but did not argue. Mr. Wicks replied. Cause submitted.

Court recessed at 9:20 a.m. to change panel members. New panel members: The Honorable Alex McDonald, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke

D050330 People v. Salcido

Cause called on merits. Howard C. Cohen, Esq. argued for appellant. Scott Taylor, Deputy Attorney General argued for respondent. Mr. Cohen replied. Cause submitted.

Court recessed at 9:46 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre

D050962 Gober et al. v. Ralphs Grocery Company

Cause called on merits. Sanford Jay Rosen, Esq. argued for appellant. Karen M. Bray, Esq. argued for respondent. Mr. Rosen replied. Cause submitted.

D050316 Noland v. Ralphs Grocery Company

Cause called on merits. Philip Edward Kay, Esq. argued for appellant. Karen M. Bray, Esq. argued for respondent. Mr. Kay replied. Cause submitted.

Court recessed at 10:46 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke
Clerk: D. Moore

D052243 Garcia et al. v. Score International Inc., et al.

Cause called on merits. Jeffrey Winter, Esq. argued for appellant. Michael J. LeVangie, Esq. argued for respondent. Mr. Winter replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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D052021 Bellizzi v. San Diego County Civil Service Commission

Cause called on merits. Robert William Krause, Esq. argued for appellant. William H. Songer, Deputy County Counsel argued for respondent. Mr. Krause replied. Cause submitted.

Court recessed at 2:35 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and James McIntyre

D050915 Crippen v. Monroe

Cause called on merits. Michael H. Wexler, Esq. argued for appellant. Charles A. Bird, Esq. argued for respondent. Mr. Wexler replied. Cause submitted.

D049585 People v. Becker

Cause called on merits. Tracy Jan Dressner, Esq. argued for appellant. Teresa Torreblanca, Deputy Attorney General argued for respondent. Ms. Dressner replied. Cause submitted.

D050445 San Marcos Enterprises, Inc. v. Park

Cause called on merits. Charles A. Bird, Esq. argued for appellant. Charles F. Gorla, Esq. argued for respondent. Mr. Bird replied. Cause submitted.

Court recessed at 4:35 p.m. until Thursday, September 11, 2008 at 9:00 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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D051102 Lawrence v. Arnell

D052464 Lawrence v. Arnell

(Consolidated) The judgment is affirmed. O'Rourke, J.; We Concur: McConnell, P.J., McIntyre, J.

D052440 People v. Leon

The judgment is affirmed. Huffman, Acting P.J.; We Concur: Nares, J., McDonald, J.

D052287 People v. Tran

The judgment is affirmed. McIntyre, Acting P.J.; We Concur: Aaron, J., Irion, J.

D051790 People v. Butcher

The judgment is affirmed. Huffman, Acting P.J.; We Concur: Nares, J., O'Rourke, J.

Court convened at 9:00 a.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Cynthia Aaron

Clerk: D. Moore

D050583 Kintera, Inc. v. Hartford Casualty Insurance Company

Cause called on merits. Carl W. Shapiro, Esq. argued for appellant. Lance A. LaBelle, Esq. argued for respondent. Mr. Shapiro replied. Cause to be submitted once respondent's counsel has filed additional authorities.

Court recessed at 9:21 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Alex McDonald

D051995 Kyres et al. v. Gomez et al.

Cause called on merits. Dan Zeidman, Esq. argued for appellant. No appearance by respondent's counsel. Cause submitted.

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Court recessed at 9:31 a.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Alex McDonald

D051027) Geib a Minor etc., et al. v. Cacatian et al.

D051237) Geib a Minor etc., et al. v. Cacatian et al.

Cause called on merits. Rachel Elizabeth Hobbs, Esq. argued for appellant. Richard H. Martha, Esq. argued for respondent, Posladek. Tamara L. Onwuegbuzia, Esq. was present in oral argument for respondent, Cacatian, but did not argue. Christopher Robert Allison, Esq. argued for respondent, Taylor. Josephine Neal Baurac, Esq. argued for respondent, Furtado. Ms. Hobbs replied. Cause submitted.

Court recessed at 9:57 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Cynthia Aaron
Clerk: D. Moore

D050763 People v. Lemons

Cause called on merits. Patrick Morgan Ford, Esq. argued for appellant. Robin Derman, Deputy Attorney General argued for respondent. Mr. Ford replied. Cause submitted.

Court recessed at 1:59 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and James McIntyre

D050933 Christie v. City of El Centro et al.

Cause called on merits. Horacio Barraza, Esq. argued for appellant. John P. McCormick, Esq. argued for respondent. Mr. Barraza replied. Cause submitted.

Court recessed at 2:30 p.m. until Friday, September 12, 2008 at 9:00 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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September 12, 2008

D052329 In re Dylan E., a Juvenile

The jurisdictional findings are affirmed. The dispositional order is reversed. McDonald, J.;
We Concur: McConnell, P.J., Aaron, J.

D052472 People v. Woodfork

The judgment is affirmed. McDonald, J.; We Concur: McConnell, P.J., Irion, J.

**D052402 Treo @ Kettner Homeowners Association v. The Superior Court of San
Diego County/Intergulf Construcion Corporation et al.**

Let a peremptory writ of mandate issue directing the superior court to vacate its November 30, 2007,
order granting the motion for general reference and enter an order denying the motion. The stay issued by
this court on February 27, 2008, is vacated. Petitioner is entitled to costs in the writ proceeding.
CERTIFIED FOR PUBLICATION. Benke, Acting P.J.; We Concur: McIntyre, J., Aaron, J.

D053600 Ibarra v. Superior Court of Imperial County/People

The petition is denied.

D052218 People v. Ramos

The judgment is affirmed. Benke, J.; We Concur: McConnell, P.J., O'Rourke, J.

Court convened at 9:00 a.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate
Justices Judith Haller and Joan Irion

Clerk: D. Moore

D049242 Edgar v. Chula Vista Elementary School District

Cause called on merits. Sean Simpson, Esq. argued for appellant. Paul Carelli, Esq. argued for
respondent. Mr. Simpson replied. Cause submitted.

Court recessed at 9:19 a.m. to change panel members. New panel members: The Honorable
Patricia Benke, acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke
and Joan Irion

D050879 McWethy, Jr. v. Village Green Inc., et al.

Cause called on merits. Livinus Reuben Uku, Esq. argued for appellant. Glen Russell Roberts,
Esq. argued for respondent. Mr. Uku replied. Cause submitted.

Court recessed at 9:34 a.m. to change panel members. New panel members: The Honorable
Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and
Joan Irion

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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D051238 Stewart v. Rady Children's Hospital et al.

Cause called on merits. No appearance by appellant. Lisa Cooney, Esq. argued for respondent. Brian A. Rawers, Esq. was present in oral argument with Ms. Cooney, but did not argue. Cause submitted.

Court recessed at 9:41 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Richard Huffman and Cynthia Aaron
Clerk: D. Moore

D051031 Jones et al. v. Barrett et al.

Cause called on merits. Nectaria Belantis, Esq. argued for appellant. David John Wilzig, Esq. argued for respondent. Ms. Belantisi replied. Cause submitted.

Court recessed at 1:40 p.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Cynthia Aaron and Joan Irion

D051569 Mayer v. Kopp

Cause called on merits. Laura I. Mayer, argued for appellant in pro per. No appearance by respondent. Cause submitted.

Court adjourned at 1:46 p.m.

D053698 Voelkle v. Superior Court of San Diego/Lloyd, et al.

The petition is denied.

D053297 Long et al. v. Superior Court of San Diego County/Kaiser Foundation Hospitals et al.

The petition is denied.

D052038 In re the Marriage of Ooi

The judgment is affirmed. Parties to bear their own costs on appeal. Haller, Acting P.J.; We Concur: O'Rourke, J., Irion, J.

D053613 In re Sanabria on Habeas Corpus

The petition is denied.

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D053573 In re Aparicio on Habeas Corpus
The petition is denied.